

November 22, 2002

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Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, D. C. 20554

Re: Comments Regarding Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (47 CFR Part 64)

Dear Madam Secretary:

I am responding as a private citizen to share my thoughts on what actions should be taken regarding the TCPA. First off let me say, great initial effort, no teeth.

I will address each of the items requested for comment where I have a strong opinion.

**Company Specific Do-Not-Call approach**

The company specific do-not-call-list is burdensome to the consumer. What you need to do is allow people to register their "do-not-call" numbers with you. The FCC can maintain them "off-line" for security and privacy issues.

Before a telemarketer begins a calling effort they must 1) be registered with the FCC and have a secure password and log on, 2) submit in ASCII delimited format to a secure FCC web site the phone numbers to be dialed.

The FCC compares the list to the do not call list and flags those numbers that are registered to the do-not-call database. The telemarketing firm is required to 1) eliminate that number from it's calling table and 2) maintain that number in a "Company Specific" do-not-call list.

There is a nominal charge to the telemarketer of \$.01 per record compared plus \$.05 per number matched. This encourages the telemarketer to maintain his own database and prescreen each list before submission.

Fines and penalties need to be imposed that would "make it hurt" if a telemarketer knowingly violates the rules by not prescreening a list with the FCC database. The \$500.00 per incident isn't enough. Make it \$5,000.00 and allow the called party to sue and collect in small claims court as well as making it a criminal offence.

## **Network Technologies**

It is with a touch of irony that I read Carl E. Mergele's November 14<sup>th</sup> Hand Delivered letter to Ms. Dortch. As CEO of one of the largest manufacturing companies responsible for the proliferation of predictive dialing equipment, there was nowhere in his letter where he was volunteering to release patented technology, that SER owns, to his industry associates that would virtually prevent an overdial condition. Ironical because since SER, nee EIS, acquired the technology in 1994 through a merger with International Telesystems Corporation, (ITC), they have never used it.

The technology developed and patented by ITC was called "Call Progress Pacing". Call Progress Pacing utilizes the data channel of a T-1 connection and the information capabilities of SS-7 to "tear-down" a launched call before it has an opportunity to ring the phone on the other end.

When a predictive dialer equipped with "Call Progress Pacing" capabilities launches a call from its database of numbers, the dial string is passed off to the Public Switched Telephone Network, (PSTN). The call travels through a series of network hubs and Central Offices, (CO) until it is delivered to the CO that is connected to the residential phone. This "call progress" from the time the last digit of the dial string leaves the dialer until it rings through at the residents CO can be anywhere from 400ms to 5 seconds.

Within the pacing algorithm is a database of the country's entire area code and NXX numbers. Each time a call is launched, the system is looking at the shortest time interval of a recognized off-hook, busy or SIP tone return for the area code and NXX of that call. If at 100ms before the shortest time interval logged in the database, there is no operator available to take the call should the call complete and begin ringing, a message is sent via the SS-7 network to tear down the call.

ITC used to use the expression launching the calls at the speed of sound, pulling them back at the speed of light.

In the unlikely event that a call completes to a ring cycle in less time than what was in the database for that area code and NXX, that time now becomes the shortest time and the database is updated.

So when you look at an industry giant like SER, nee EIS, that has sat on technology for almost 10 years that would have virtually eliminated the "nuisance call", you have to ask yourself what is their motivation and why are they sniveling now that the issue has escalated to legislation.

They could have prevented it years ago.

## **As to Autodialers**

There is a lot of confusion on the part of the consumer and the legitimate telemarketing industry is taking the rap for a few unscrupulous characters that are using Automated Dialing Recorded Message, (ADRM) delivery devices for lead prospecting.

Although it is illegal today to use such a device to solicit business for a for-profit concern, many companies do it with impunity because it is almost impossible to identify them and the penalties do not outweigh the benefits.

I receive on average 10 calls a week to each of my two phone lines, (it used to be three) from ADRM's. Although I have collected \$1,500.00 from one mortgage company that used the device to call each of my three lines, it wasn't worth my time and the effort to extract that level of satisfaction.

The biggest problem is that there are privacy laws protecting the criminals. When I get one of these calls, I can't call the phone company and say, "I just received an illegal call from (202) 418-0217. Please identify for me the owner of that number." The phone company will say, "We are prevented by law from disclosing that information." Even if I request a trap be placed on my line and report back to them the specific time and date that one of these illegal calls occurred, they will only give the identifying information to the local law enforcement jurisdiction and not to me. The local police or sheriff department is not going to do anything other than keep a record that it occurred.

The only way that I was able to peruse the mortgage company in small claims court was tantamount to entrapment. I had to leave my phone number on the recording and when the agent called back two days later I was able to determine which company was using the ADRM.

The next hurdle was trying to find out if the company was a corporation, a partnership or a sole proprietorship. Determining if there was an agent of record in the state. Having papers served. All in all, a whole lot of time and effort.

Most people that complain about these ADRM calls incorrectly blame it on predictive dialers. They don't know that it is illegal to use them and what their rights and remedies are. Even if they did, most people would not peruse because it is a very "unfriendly" environment to seek legal remedy from with very little effort reward ratio.

As a result, the companies that manufacture and sell ADRM equipment tell these companies that they can use the equipment with impunity, because no one will ever be able to track them down.

You want to make the general population happy? Make it easy for the general public to “extract” their “pound of flesh” from these companies.

Allow people unlimited small claims actions against violators of the TCPA instead of the current 12 per year. Increase the fine that an individual can collect from \$500.00 to \$5,000.00 per incident. Allow the individual to go after the manufacturer of the equipment that provided it to a “for profit” company for its specific use.

Allow people to easily identify the companies that are using ADRM’s and currently hiding behind privacy laws. Educate District Attorney’s and Judges so they can assist individuals who want to peruse action against these companies.

That’s my input. I would be happy to meet with you the next time I’m in D.C., or feel free to contact me with any comments or questions.

Sincerely,

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